

LOS ANGELES COUNTY DISTRICT ATTORNEY'S OFFICE
BUREAU OF PROSECUTION SUPPORT OPERATIONS
JUSTICE SYSTEM INTEGRITY DIVISION

GEORGE GASCÓN • District Attorney
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August 3, 2022

[redacted]
Los Angeles County Sheriff's Department
Homicide Bureau
1 Cupania Circle
Monterey Park, California 91755

Re: Fatal Officer Involved Shooting of Donnell Thompson, Jr.
J.S.I.D. File #16-0380
L.A.S.D. File #016-09413-2812-013

Dear [redacted]

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the July 28, 2016, fatal shooting of Donnell Thompson, Jr. by a member of the Los Angeles County Sheriff's Department. Our detailed analysis of this incident is contained in the attached memorandum.

Very truly yours,

GEORGE GASCÓN
District Attorney

ALAN YOCHELSON
Head Deputy District Attorney
Justice System Integrity Division

c: Deputy James Ponsford, #[redacted]

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MEMORANDUM

TO: [redacted]
Los Angeles County Sheriff's Department
Homicide Bureau
1 Cupania Circle
Monterey Park, California 91755

FROM: JUSTICE SYSTEM INTEGRITY DIVISION
Los Angeles County District Attorney's Office

SUBJECT: Fatal Officer Involved Shooting of Donnell Thompson, Jr.
J.S.I.D. File #16-0380
LASD File #016-09413-2812-013

DATE: August 3, 2022

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the July 28, 2016, fatal shooting of Donnell Thompson, Jr. by Los Angeles County Sheriff's Department (LASD) Deputy James Ponsford.[1] It is our conclusion there is insufficient evidence to prove beyond a reasonable doubt that Deputy Ponsford was not acting in lawful self-defense or defense of others.

The District Attorney's Command Center was notified of this shooting on July 28, 2016, at approximately 6:37 a.m. The District Attorney's Response Team responded and was given a briefing and walk-through of the scene.

The following analysis is based on reports submitted to our office by LASD Sergeants Domenick Recchia and John O'Brien. The reports include photographs, video, audio-recorded interviews of witnesses, and radio transmissions. The voluntary statement of Deputy Ponsford was also considered in this analysis.

FACTUAL ANALYSIS

The Armed Carjacking

On July 28, 2016, at approximately 12:10 a.m., Robert Alexander displayed a gun and carjacked a man's gray Honda Civic. The victim reported the incident to the Los Angeles Police Department (LAPD) and described the suspect as an African American man with tattoos on his face and a Mohawk hairstyle.

Attempt to Detain Alexander

At 2:26 a.m., LASD Deputy Giovanni Rico was on patrol in a marked patrol vehicle when he saw a man, later identified as Alexander, driving a gray Civic at a high rate of speed and running

[1] Ponsford has been assigned to the LASD Special Enforcement Bureau since 2009.

stop signs. Rico followed. Before Rico could initiate a traffic stop, Alexander suddenly stopped the Civic and opened the driver's side door. Rico drew his service weapon and ordered Alexander to stay in the vehicle. Rico determined that the Civic was the car carjacked hours earlier and called for backup. Deputies Anthony Bautista, Roland Burk, and Edwin Barajas arrived to assist. The deputies ordered Alexander to turn off the car and exit. Alexander ignored those commands and yelled, "I'm not going to do anything! I'm not going to do anything!"

The Pursuit and Shooting

Alexander closed his driver's side door, put the car in drive, sped away, and crashed through two chain-link fences at an elementary school, and the pursuit continued.

At 2:33 a.m., as Alexander continued to evade, a muzzle flash and popping sounds consistent with gunfire came from the Civic toward the deputies. The deputies felt something hit their patrol car and believed Alexander was firing rounds at them. Rico broadcast, "Be advised he has a 417 (gun) and he is shooting at us!" Alexander then crashed the car. While still seated in the driver's seat of the Civic, Alexander fired more rounds at the deputies, striking the hood of one of the police vehicles. The deputies exited their vehicles, took cover, and discharged their service weapons at Alexander. A photograph of the Civic where it came to rest after the crash showing bullet damage to the rear is shown below:



Figure 1 - Photo of the vehicle Alexander carjacked and crashed with bullet damage circled in red.



Figure 2 - Photo of bullet damage to the patrol car circled in red.

Possible Second Suspect

At 2:33 a.m., one of the deputies involved in the shooting, Roland Burk, heard one of his partners say that a suspect ran east from the location (the direction of where the Thompson shooting ultimately occurred). Burk relayed that information over the radio and requested a containment east of their location.

Alexander Flees on Foot

After Burk broadcast that a suspect ran east, the deputies heard moaning sounds coming from Alexander's car. The deputies were unsure if Alexander had been injured in the crash or during the exchange of gunfire or was possibly faking injury.

The deputies held Alexander at gunpoint and approached the Civic with a ballistic shield. When the deputies came close to the Civic, Alexander suddenly exited the vehicle and ran. Later, deputies told investigators they believed Alexander was "playing possum." A medical examination later determined that Alexander was uninjured.

At 2:40 a.m., a deputy broadcast that the suspect ran northbound, had a gun in his hand, and was wearing a blue jersey and dark pants. No description of the suspect's hairstyle was given.

At 2:43 a.m., a deputy updated the suspect description as a male black in his mid-twenties, wearing a blue basketball jersey and shorts, with a gun in his right hand. No description of the suspect's hairstyle was given.

A containment was set up to locate Alexander and numerous deputies, including deputies from the LASD Special Enforcement Bureau (SEB) in Armed Response Vehicles (ARVs), LASD K-9 deputies, and LAPD officers and LASD deputies in helicopters participated in the containment and search.

Alexander Detained

At 4:56 a.m., deputies believed they located a suspect hiding at a residence and believed there was a possible hostage situation. As that situation developed, a deputy radioed for one of the witness/victim deputies to respond to that location to possibly identify a suspect, if located. The witness/victim deputies were waiting at the Compton Sheriff's Station approximately two miles away as the investigation unfolded.

At 5:02 a.m., deputies located Alexander hiding in a bedroom and detained him pending a field identification. Alexander was wearing only black underwear which was inconsistent with the clothing description of the suspect the deputies were pursuing. He was not wearing a blue jersey and a gun had not been located.[2] The identity of Alexander as the actual suspect had not been determined when there was a radio broadcast of a "man down" nearby. The deputies continued to detain Alexander pending a field show up, but they believed the actual suspect could still be outstanding.

Alexander was not positively identified as the actual suspect until after the officer involved shooting of Thompson.

A photograph of Alexander at the time of his booking is shown below:



Figure 3- Alexander's booking photo.

[2] A Ruger .357 magnum pistol was eventually located in the residence and matched to a projectile recovered at the scene where the deputies were fired upon.

Alexander was charged in case number BA448919 with four counts of attempted murder of a peace officer, evading, and armed carjacking. He died by suicide while in custody at Patton State Hospital. The case was dismissed before the preliminary hearing.

[redacted] 9-1-1 Call of a Man Down

At 5:00 a.m., [redacted] exited his residence to move his trashcans prior to leaving for work. He saw Donnell Thompson, Jr. laying on the grass next to a parked vehicle.

A DMV photograph of Thompson taken at an earlier date is shown below:



Figure 4- Thompson's DMV photo.

Thompson wore a basketball jersey, which was consistent with the description of the person who shot at the deputies. Thompson did not respond to the sounds of the trashcans moving and [redacted] was unsure if Thompson was sleeping, drunk, under the influence of drugs, or dead. [redacted] said that because of the position of Thompson's body it looked as if he had just thrown himself down on the ground. [redacted] could not see Thompson's hands and did not see anything on the ground next to him. He did not know Thompson, so he thought it was suspicious for Thompson to be laying in that location. [redacted] decided to contact the police. He drove his car to the end of the street where he spoke to an unknown deputy, who was assisting in the containment, and reported what he saw. The deputy told him that the deputies were dealing with another incident and that he should return home and call 9-1-1. [redacted] drove back to his residence, parked, and called 9-1-1.

At 5:01 a.m., Deputy Clinton Randall and his partner [redacted], Nakeisha Green, received the "man down" service call at [redacted]s residence. The broadcast described the "man down" as an African American man wearing a blue basketball jersey and black shorts in front of the residence. No description of the man's hairstyle was provided.

At 5:02 a.m., as deputies were responding to the "man down" call, another deputy radioed that they were detaining a suspect (Alexander) at a nearby residence, pending a field show-up with Deputy Rico.

At 5:08 a.m., Randall and Green arrived at [redacted] residence to investigate the "man down" call. It had not yet been determined if Alexander was the man who shot at the deputies. Due to rapidly unfolding circumstances, a field show up of Alexander with the victim witness deputies was not conducted until after Thompson had been shot.

Fearful that Thompson could be the actual armed suspect the deputies were looking for, Randall instructed [redacted] to leave.

Randall and Green observed Thompson laying on a grass parkway separating the street from the sidewalk. Thompson was in an awkward position, partially on his stomach and right side, facing the residence. His left hand was under his head, and his right arm and hand were underneath his body. The deputies held Thompson at gunpoint and radioed that Thompson matched the description of the earlier pursuit and shooting suspect and may have suffered a gunshot wound because he was gasping for air and appeared to have labored breathing. They did not report seeing blood. SEB deputies arrived shortly thereafter.

At 5:13 a.m., as SEB deputies were still responding, and the field show up with Alexander was still pending, Deputy Burk radioed, "Hey, for SEB K-9 units approaching, he may have a gun next to him on the ground." Burk explained that he believed there was an object that may have been a weapon on the ground next to Thompson, which is why he broadcast that information to the deputies. He said, "There was something laying next to his body. I wasn't close enough to pos[itively] ID a gun. And, I think, when Aero came overhead, I think, they said something else about, uh – I forget the word they used is, but there was something – Aero, also, also obs'd something next to the body." Burk further stated, "But they didn't say it was a gun. And, I, and, I didn't, I couldn't positively identify it as a gun." Burk said he broadcast the information about the gun for safety reasons, "because there was something on the ground next to him that we couldn't identify."

The relevant locations are shown on the map below:

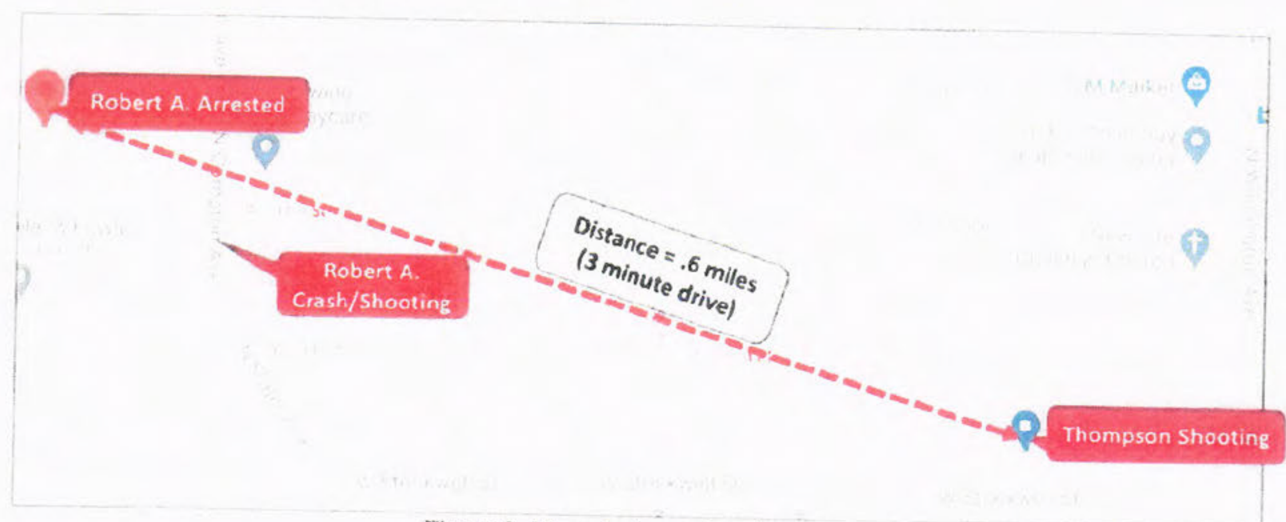


Figure 5- Map of relevant locations.

Special Enforcement Bureau (SEB) Response

Upon receiving information that Thompson could be the carjacking and shooting suspect and may have been suffering from a gunshot wound, SEB deputies responded to the location in multiple ARVs.

When the SEB deputies arrived, they believed that Thompson could be the suspect because of his proximity to the site where the Civic had crashed and the suspect had fled, he was wearing a jersey, he was positioned awkwardly in the front yard of a residence, and he was exhibiting agonal (labored) breathing, which is consistent with someone suffering from a gunshot wound.

SEB Deputy Casey Cheshier, who was also assigned as a medic at the scene, stood next to a patrol deputy who reported to Cheshier that Thompson was armed with a handgun. Cheshier used the laser on his rifle to search for the possible handgun and pointed out several brown objects on the ground near Thompson. The patrol deputy with Cheshier could not identify the handgun for Cheshier but insisted that Thompson was armed.

Cheshier also observed Thompson's breathing pattern, which he described as agonal. Cheshier and the other SEB deputies discussed Thompson's breathing pattern and believed he had not simply passed out from being drunk but may have suffered a gunshot wound.

SEB Deputy Chris Smelser and his team positioned their ARV near Thompson. To obtain a better view of Thompson and his hands, Smelser instructed a second ARV to position near Thompson. Ponsford manned the elevated roof turret on one of the ARVs, armed with an M-4 Carbine rifle with a magnifying scope.

Once Ponsford's ARV was in position, he advised the deputies that he could see Thompson's left hand, but not his right hand because he was laying on his right arm. Ponsford did not see a gun.

Deputies yelled, "Suspect! Put your hands up! Put your hands up! It's the Sheriff's Department!" The commands were also issued over a public address system. Thompson did not respond.

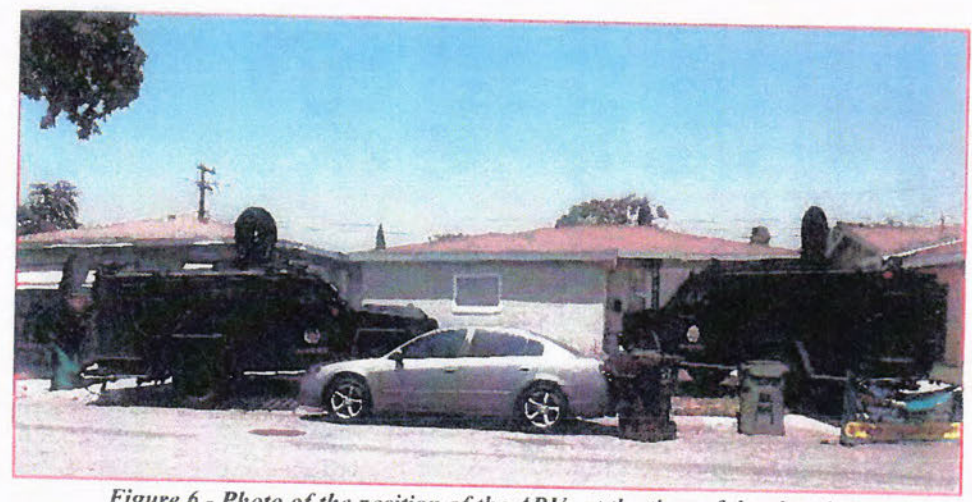


Figure 6 - Photo of the position of the ARVs at the time of the shooting.

Less-Lethal Force

Because Thompson was nonresponsive to verbal commands, the deputies detonated a flash bang device next to him. Thompson did not react. The deputies continued to issue verbal commands but Thompson did not react. A deputy fired less-lethal rubber bullets at Thompson, striking Thompson in the buttocks, lower back, and abdomen. Thompson suddenly stood up. Deputies yelled, "Get down on the ground! Get your hands up! Get your hands up! Get down on the ground!" Thompson did not comply.

The Shooting

Deputy Smelser said Thompson appeared to have "mass confusion" on his face. Deputy Jeff Pohl, who stood behind one of the ARVs, said Thompson was waving his hands around in "quick movements" and that his hands were moving all over the place. Thompson turned and moved quickly toward Ponsford and his ARV. When Thompson and Ponsford were approximately ten to 20 feet apart, Ponsford pointed the light from his rifle and a green laser into Thompson's face to disable him. Thompson did not react to the light. As Thompson continued toward the ARV, Ponsford fired two rounds at Thompson, who fell to the ground directly beside Ponsford and the driver's door of the ARV. Uncertain as to whether Thompson had been struck and fearful that he was armed with a weapon, a deputy fired two more less-lethal rubber bullets at Thompson. Thompson did not react. Medical aid was rendered. A paramedic declared Thompson deceased at 5:37 a.m.

No firearm was found in Thompson's possession or in the area where he had been laying on the ground.

The Field Show-Ups

After Thompson was shot, the deputies conducted field show-ups in an attempt identify Thompson and Alexander's involvement, if any, in the carjacking and shooting. Rico was brought to the location for a field show-up of Thompson, who was deceased. Rico did not identify Thompson as the person who shot at him. Rico was then transported to a field show-up of Alexander. Rico positively identified Alexander as the person driving the Civic who shot at him and the other deputies.

The Autopsy

On July 31, 2016, Deputy Medical Examiner Ogbonna Chinwah performed a postmortem examination of Thompson and determined that he was shot in the chest and back and the cause of death was multiple gunshot wounds. In 2020, Deputy Medical Examiner Mathew Miller, M.D., reviewed Dr. Chinwah's report and confirmed that Thompson had been shot twice and the gunshot wounds were consistent with a trajectory of Thompson being in a head down position and moving toward Ponsford, who was shooting from an elevated position. A toxicology analysis was performed, and the presence of alcohol, marijuana, and cocaine were present in Thompson's blood at the time of his death.[3]

[3] Thompsons's toxicology results were .157, .134, and 088 grams ethanol, .08 ug ml cocaine, and 16 ng mL THC.

Video Evidence

There is no body worn video, dash camera, or surveillance video of the shooting.

However, a local news media outlet, KTLA News Channel 5, recorded a portion of the shooting, which was not broadcast. It is unknown what is shown on that video. Investigators obtained a court order to obtain the non-broadcast video, but KTLA declined to provide it, citing the California Shield Law afforded to media outlets as embodied in California Evidence Code section 1070 and the California Constitution.

Statement of Deputy Roland Burk

Burk said that he and his partner, Barajas, responded to assist Rico, who was holding Alexander at gunpoint in a stolen vehicle investigation. Burk saw Alexander seated in the vehicle, in the driver's seat with the door open. Alexander fled in the Civic and the deputies engaged in a vehicle pursuit. Alexander engaged the deputies in a shootout, and Burk exited his vehicle to take cover. An unknown deputy said to Burk that a suspect had run east from the location. Burk broadcast that an officer-involved shooting had occurred, and a suspect ran east. Moments later backup units arrived, and Burk reported that no one ran from the Civic, so they formed a plan to clear the vehicle.

Armed with a shield, the deputies slowly approached the vehicle. When they came within 15 feet, Alexander "popped out" of the driver's seat and ran. Burk never saw the passenger door of the Civic open and did not remember whether the Civic's passenger side door was open or closed.

Several hours after the shootout, he responded to the "man down" call to assist Deputies Randall and Green, and to see if he could positively identify Thompson as the suspect from the earlier pursuit and shooting incident. As SEB deputies were deploying, Burk saw Thompson, who wore dark colored clothing, laying in front of the residence on the grass parkway. Burk could not see Thompson's hands and could not tell if he was injured. Burk was unable to identify whether Thompson was the suspect who had run from the Civic because Thompson's back was to him. Burk also could not tell from his vantage point if Thompson appeared to be injured. Thompson was not moving, and Burk could not see his hands.

Burk radioed, "Hey, for SEB K-9 units approaching, he may have a gun next to him on the ground." Burk explained that he believed there was an object that may have been a weapon on the ground next to Thompson, which is why he broadcast that information to the deputies. He said, "There was something laying next to his body. I wasn't close enough to pos[itively] ID a gun. And, I think, when Aero came overhead, I think, they said something else about, uh – I forget the word they used is, but there was something – Aero, also, also obs'd something next to the body." Burk further stated, "But they didn't say it was a gun. And, I, and, I didn't, I couldn't positively identify it as a gun. Burk said he broadcast the information about the gun for safety reasons, "because there was something on the ground next to him that we couldn't identify." The SEB deputies arrived and directed Burk, Randall and Green to redeploy. Burk had no further involvement at the location. None of the SEB deputies had asked Burk to point out where the gun was.

Statement of Deputy Clinton Randall

Randall was assigned to patrol duty with his [redacted] Deputy Nakeisha Green. He and Green heard radio communications regarding the traffic pursuit involving Deputy Rico. Randall and Green responded to assist. The pursuit and shooting had terminated by the time they arrived. After approximately ten minutes, they were redeployed back to patrol duty.

At 5:01 a.m., Randall and Green received a "man down" service call involving a man wearing a blue basketball jersey and black shorts in front of the residence. After arriving at the residence, [redacted] approached the deputies and said there was a man wearing a blue jersey and black shorts on the grass in front of his residence, next to a parked vehicle. He instructed [redacted] to go inside his residence. Randall saw Thompson laying on his right side, almost in a fetal position, on the grass area next to a curb. Randall and Green held Thompson at gunpoint. Randall could not see Thompson's hands because they were tucked underneath his body. He ordered Thompson to put his hands up and lay flat on the ground. Thompson did not move. Randall radioed that he was detaining Thompson, who he believed matched the description of the suspect from the earlier shooting. Because Thompson was gasping for air and appeared to have labored breathing, Randall also radioed that it appeared as if Thompson had suffered a gunshot wound. Randall believed that Thompson was the suspect from the earlier pursuit and shooting because of the matching clothing and physical description, his proximity to the location of the earlier shooting, and his labored breathing suggested that he was possibly wounded. Randall was advised that SEB units were enroute to the location.

Approximately 45 seconds later, Burk and his partner arrived. Burk radioed that Thompson was in a fetal position facing the house and possibly had a gun near his head. Randall could not see Thompson's hands. He did not see any weapons or debris on the ground next to Thompson. Randall and Green did not approach Thompson. They held him at gunpoint until SEB deputies arrived approximately 30 seconds later. Once the additional deputies arrived, Randall and his partner were directed to move their vehicles to allow the SEB vehicles to move into position. When the shooting occurred, they were no longer in a position to see Thompson.

Statement of Deputy Nakeisha Green

Green and Randall responded to a "man down" call on Stockwell Street. [redacted] approached them and said Thompson was laying on the grass. Green saw Thompson laying in the grass facing the residence, on his right side, in a semi-fetal position. Randall said, "He's still breathing," and Green saw him taking occasional breaths. The deputies believed Thompson, who wore a basketball jersey and shorts, matched the description of the pursuit and shooting suspect, therefore they did not approach him. Green could not see Thompson's hands, and did not see any firearm or other objects near him. Randall ordered Thompson not to move. Randall radioed that they were detaining Thompson as a possible suspect. Thompson only slightly moved or rocked forward twice while Green was present at the scene. Deputy Burk and additional deputies arrived at their location. Green heard Burk radio that Thompson possibly had a weapon, but Green did not see a weapon. Following the arrival of SEB deputies, she and Randall were redeployed away from the area to block traffic.

Statement of Deputy [redacted]

[redacted] was assigned to SEB and responded to the scene regarding an armed suspect involved in a shootout with deputies. Bonilla arrived at approximately 3:30 a.m. and was briefed that the suspect in the pursuit and earlier shootout had been "lying in wait" and did not respond to commands until deputies approached.

[redacted] saw Thompson laying on his right side and partially on his stomach, on the grass parkway in front of the residence. He wore a basketball jersey and black shorts. Thompson's right arm was bent underneath his body, and his left arm appeared to be extended in front of his body, but [redacted] could not see either of Thompson's hands. Thompson was being held at gunpoint by at least three uniformed patrol deputies. [redacted] believed Thompson was armed and was the suspect from the prior pursuit and shootout because he was a block and a half away, matched the description of the suspect, and his "lying in wait" behavior was similar.

Deputies ordered, "Surrender! Show your hands!" Thompson did not respond or react to the verbal commands. Following numerous commands, another ARV pulled into the driveway near Thompson. A flash bang device was deployed, landing four to five feet away from Thompson. The device emitted an extremely loud noise, but Thompson did not move or react.

Concerned that Thompson was possibly "lying in wait," as he had in the previous shootout, [redacted] fired three less-lethal rubber bullets at Thompson, striking him twice. Thompson reacted by reaching toward his leg. He sat up and looked at the deputies. Thompson did not comply with commands that were being made, and continually looked around. [redacted] could not see his right hand. Thompson began to stand up, and [redacted] fired a fourth round, striking Thompson in the stomach. Thompson jumped up and ran directly toward Ponsford and his ARV. [redacted] heard two gunshots, and Thompson fell to the ground.

After Thompson went down, and believing that Thompson was armed, [redacted] was again directed to deploy the rubber bullets. [redacted] fired two additional rounds, striking Thompson in the legs. Thompson did not respond, and the arrest team took him into custody and rendered medical aid.

Statement of Sergeant Russell Boucher

Boucher was assigned to SEB. He and his team responded to assist with the search for the vehicle pursuit and shooting suspect. Boucher's team had been advised that the suspect had been "playing possum" by hiding in his vehicle and moaning, then fled when deputies approached. Boucher was advised that Alexander was wearing a sports jersey and dark colored shorts, and had been seen inside a residence, and there was a potential hostage situation. The SEB teams searched the residence and the surrounding area for Alexander

Following a 9-1-1 hang up call, an SEB team searched the residence again and eventually discovered Alexander inside. Alexander was being detained pending a field show-up identification when a patrol deputy broadcast that Thompson was being detained as a possible suspect as he lay on the grass at a nearby residence. The patrol deputy also broadcast that Thompson matched the description of the individual involved in the earlier vehicle pursuit and shooting, appeared to have a gunshot wound injury, and was laying next to a handgun.

Boucher and the SEB deputies went to that location in ARVs and saw Thompson laying on the grass. Boucher and the other SEB personnel were aware that Alexander had not yet been identified as the suspect in the pursuit and shooting, and that Thompson may have been the correct suspect.

A flash bang device was detonated near Thompson. Thompson's leg twitched but there was no other visible reaction to the verbal commands or the flash bang. Boucher believed that Thompson's lack of response to the verbal commands and the flash bang device suggested that he was "playing possum" as Alexander did in the earlier incident.

Boucher's ARV was driven in position to allow the deputies a better view of Thompson's hands and any possible weapons. Despite moving into the driveway, approximately 15 feet from Thompson, Thompson's hands were still not visible. His left hand was under his head and his right arm was underneath his body. He was given verbal commands to show his hands and surrender, but he did not respond. Boucher and the deputies in his ARV did not see a firearm next to Thompson so Boucher requested the assistance of the deputies in the airship in locating a weapon. The airship deputies were unable to observe a firearm next to Thompson.
After Thompson failed to respond to additional verbal commands, several rounds of rubber bullets were fired at him. The first round missed, and Thompson had a minimal reaction to being struck by the second round. Thompson reacted to the third rubber projectile by briefly coming up to his knees, looking around at the deputies, and then standing up. Verbal commands were still being given to Thompson, but he did not comply. Thompson, from approximately 20 feet away, took two steps, appearing as if he was going to walk away. He reached into the pocket on his shorts and moved toward the ARV at a hurried pace that was faster than a walk. He pulled his hand out of his pocket and then reached toward his waistband. Thompson moved to within two to three feet of Boucher's ARV. Ponsford fired one round. Thompson continued moving forward toward Boucher's ARV and Ponsford fired another round. Because of his location inside the ARV, Boucher could no longer see Thompson after the second round was fired.

Statement of Deputy John O'Hara

O'Hara was assigned to the Aero Bureau and was the observer in the LASD helicopter that was overhead at the time Thompson was shot. While flying to the scene, O'Hara was informed over the radio that the outstanding suspect was wearing a blue jersey and dark shorts. He arrived at the scene to assist and heard a "man down" call. He illuminated the area with a search light and saw Thompson laying on the grass. Thompson was wearing a blue jersey and black shorts, which matched the suspect description. Thompson was face down and not moving. O'Hara could not see anything next to Thompson. The patrol unit on the ground (Randall) broadcast that the person on the ground had a gun. SEB units arrived and made several public address announcements. Thompson did not respond. SEB deployed two flash bang devices near Thompson but he did not react. SEB deputies then fired rubber bullets at Thompson. Thompson stood up and ran toward one of the ARVs. Thompson then fell to the ground.

Statement of Deputy Spencer Reedy

Reedy responded to the scene with his K-9 partner, Basco. Reedy saw Thompson laying on the grass in an unnatural position and he appeared to be lifeless. Reedy believed that Thompson fit the description of the carjacking suspect. Thompson was laying on his right side and Reedy could not see Thompson's right hand. Deputies ordered Thompson to show his hands. He did not comply. Flash bang devices were deployed but Thompson did not react. Thompson's breathing appeared to be infrequent. Reedy believed that Thompson was possibly shot and dying. Deputies then fired rubber bullets at Thompson. The first bullet missed. The second bullet caused Thompson to move slightly and indicated that Thompson was alive. Thompson was struck with a third rubber bullet. Thompson jumped up and ran toward one of the ARVs. He heard two gunshots and heard over the radio that the suspect was down.

Statement of Sergeant Jeff Moore

Moore assisted in containing the residence where Alexander was located. While assisting in that detention, a call came over the radio of a "man down" and an indication that the person may be laying on a firearm. He also heard on the radio that the man might have a gunshot wound and was a possible suspect. He drove to the location and saw Thompson laying on the grass. Deputies gave Thompson orders. He did not comply. A flash bang was deployed and got minimal response from Thompson. A deputy fired rubber bullets at Thompson, who then got up and ran toward one of the ARVs. He heard gunshots and was told that the suspect was down.

Statement of Deputy Adam Stoll

Stoll and his K-9 partner, "Bo", responded to the location and heard over the radio that there was a man down laying next to a firearm. He saw Thompson laying on the grass and his hands were underneath him. He believed Thompson was armed based on the radio traffic he heard. Deputies issued commands and deployed a flash bang device and rubber bullets. Thompson did not initially react so Stoll thought Thompson was dead. After a third rubber bullet was fired, Thompson "came alive." Stoll was surprised. Thompson jumped up and ran toward one of the ARVs. He heard two gunshots. Deputies then rendered medical assistance to Thompson.

Statement of Deputy Steve Phillipi

Phillipi responded to the scene with his K-9 partner, "Max." He was assisting in the containment when he heard a call of a man down who matched the description of the carjacking suspect, possibly had a gunshot wound, and was armed. He saw Thompson laying on the grass. Deputies issued commands to Thompson, but he did not respond. Phillippi thought Thompson was dead. Flash bang devices were deployed but there was minimal response from Thompson. One of the paramedics at the scene said he saw Thompson breathing shallow and could be alive. A deputy fired rubber bullets at Thompson, who then got up and ran out of Phillipi's view. He heard two gunshots.

Statement of Deputy Steve Smelser

Smelser was assigned to SEB and responded to the scene. Patrol deputies had broadcast that there was a man down who fit the description of the man who shot at the deputies earlier, he was

armed, and they could not see his hands. Deputies announced to Thompson that they were there to help him and to show his hands. Thompson did not respond. A flash bang device was detonated near Thompson but that did not stimulate Thompson. A deputy fired a rubber bullet at Thompson that missed. A second rubber bullet struck Thompson and he twitched. A third rubber bullet struck Thompson and he sat up. His hands were tucked in his waistband. Smelser ordered Thompson to show his hands and lay down on the ground. Thompson sprinted toward one of the ARVs and he heard two gunshots and heard that the suspect went down. He ordered Ponsford to take cover in the ARV. They drove the ARV closer to Thompson, but it was very dark, and he could not determine if Thompson had been hit. A deputy fired two more rubber bullets at Thompson to determine if Thompson was incapacitated. Smelser and his team then approached Thompson, detained him, and rendered medical assistance.

Statement of Deputy Mike Pokorny

Pokorny was assigned to SEB and responded to the scene. He arrived with his team and saw Thompson laying on the grass. They could not see Thompson's hands, so they maneuvered their ARV to get a better vantage point. Pokorny still could not see Thompson's hands. Deputies issued verbal commands, deployed a flash bang device, and fired rubber bullets at Thompson. Thompson jumped up and ran toward one of the ARVs. He heard two gunshots. Deputies took Thompson into custody and rendered medical assistance.

Statement of Deputy Casey Cheshier

Cheshier was assigned to SEB and responded to the scene. He was also one of the paramedics assigned to the incident. He saw Thompson laying on the grass. A patrol deputy standing next to Cheshier was adamant that Thompson had a gun. Cheshier used the laser on his rifle to illuminate Thompson and the area around him. There were several objects but Cheshier did not see a gun and the deputy next to him was not able to identify any of those objects as a gun either. Cheshier believed that Thompson was injured because he was exhibiting agonal breathing, which would be consistent with Thompson being shot. A flash bang device was deployed but Thompson did not respond, which was also consistent with him being injured. Deputies fired rubber bullets at Thompson, who then stood up and ran toward one of the ARVs. He heard two gunshots and Thompson went down. Cheshier approached Thompson and rendered medical assistance. He smelled a strong odor of an alcoholic beverage emanating from Thompson.

Statement of Deputy Kevin Hilgendorf

Hilgendorf was assigned to SEB and responded to the scene. While enroute he heard over the radio that the suspect was armed and bleeding. He arrived with his SEB team, and they attempted to maneuver the ARV to allow Ponsford to see Thompson's hands. Ponsford advised that he could see Thompson's left hand but not his right. Thompson was laying on his right arm. Hilgendorf was inside the ARV and did not see the shooting, but he heard the rubber bullets being deployed and he heard two gunshots.

Statement of Sergeant Kamal Ahmad

Kamal was assigned to SEB and responded to the scene. He was assisting in the detention of Alexander when he heard over the radio that there was a second suspect nearby who may have

been shot and was armed. Ahmad went to that location and saw Thompson laying on his right shoulder on the grass. Based on the information they had from the patrol deputies that the suspect had faked an injury earlier, Ahmad was concerned that Thompson could be faking an injury to lure the deputies in and shoot them. They gave verbal commands to Thompson, but he did not comply. Thompson was exhibiting agonal breathing and was motionless. Ahmad believed that Thompson could be hiding a gun underneath him. Thompson's legs were moving slightly. Ahmad ordered the deployment of a flash bang device. Thompson did not react. A second ARV moved into position to get a better vantage point to see if Thompson was armed. It could not be determined if Thompson was armed, so Ahmad ordered a deputy to fire rubber bullets at Thompson. After the third rubber bullet, Thompson stood up and ran directly at one of the ARVs. He heard two gunshots and Thompson fell to the ground. They moved in as SEB paramedics rendered medical aid to Thompson.

Statement of Deputy Jeff Pohl

Pohl was assigned to SEB and was involved with the containment and attempt to locate the suspect. He was also one of the paramedics assigned to the incident. Pohl heard over the radio that a deputy was holding a suspect at gunpoint. He went to that location and saw Thompson laying on the grass. Thompson's clothing and description matched the suspect's description and clothing. He could not see Thompson's hands. Thompson was moving slightly and breathing but not complying with verbal commands. Pohl believed that Thompson could possibly be injured. A flash bang device was deployed but Thompson did not react. SEB personnel fired rubber bullets at Thompson and he stood up. Pohl stated, "Thompson was waving his hands around in quick movements. His hands were all over the place. It went so quickly. He turned toward us and turned away from us. His hands went up then they went down toward his waistband and then he started looking. Appears to try to see what we were doing and then kinda started walking, almost like gonna run toward the armored vehicle to my right. Thompson was slightly crouching advanced toward one of the ARVs." Pohl said he heard two gunshots and saw Thompson fall. Deputies searched Thompson and did not find a weapon. Pohl and the other paramedics tried to revive Thompson. Deputy Sheperd, another paramedic at the scene, declared Thompson deceased.

Statement of Deputy Mark Desmarteau

Desmarteau was assigned to SEB and was involved with attempting to locate the suspect. He was also one of the paramedics at the scene. He heard over the radio that patrol deputies had been involved in a gun battle, were holding a suspect at gunpoint, and the suspect might be laying on a firearm. He went to that location and saw Thompson laying on his right side on the grass. His left hand was under his head and his right hand was concealed under his body. Desmarteau heard radio communications that a gun might be in Thompson's right hand, but his hand was concealed under his body. Desmarteau believed that Thompson was injured or dead because he did not respond to numerous verbal commands from the deputies. He saw Thompson move his foot and Desmarteau attempted to assess if Thompson was injured. Thompson was breathing deeply and only moving slightly. Deputies issued commands over their public address system for Thompson to show his hands and surrender peacefully but Thompson did not respond. SEB personnel detonated a flash bang device near Thompson but he did not respond. Deputies fired rubber bullets at Thompson. He sat up. Deputies yelled, "Show us your hands! Show us your hands." Thompson did not comply. Thompson came to his feet and looked at the

deputies. Desmarteau said, "It looked like he looked at us again but over his left shoulder so you couldn't see his right hand. I was trying to focus on his hands. I could see his left hand a little bit. I didn't see an object in it. It wasn't clear but I definitely couldn't see his right hand." Thompson made his way toward one of the ARV's. Desmarteau said, "It looked like he was going right at that armor (ARV)." He believed that Thompson was going to run and Desmarteau was getting ready to chase him. Desmarteau heard two gunshots and saw Thompson fall. Desmarteau and the other paramedics then rendered medical assistance to Thompson.

Statement of Deputy Jennifer Sheperd

Sheperd was assigned to SEB and was one of the paramedics assigned to the incident. She was assisting with detaining a possible suspect inside a residence. Sheperd heard a radio call that patrol deputies were detaining a possible suspect nearby. Sheperd said, "What I remember hearing was they had somebody detained at gunpoint and that he had a gun and that was their suspect." That information confused her because she was initially told that there was just one suspect involved in the shooting with deputies. She heard the man being detained had a firearm and was laying face down on the ground. Sheperd went to that location and saw Thompson laying on his right side on the grass, as she took cover behind one of the ARVs. Thompson was not moving and Sheperd wondered if he was breathing. Sheperd was told that the man may have been shot by deputies during the gun battle earlier. Thompson appeared to be breathing but she retrieved her medical pack and airway kit in case she would have to intubate Thompson. She heard a flashbang detonate and rubber bullets being deployed. She did not hear gunshots or see the shooting. Sheperd saw Thompson on the ground and she and five other paramedics from SEB rendered medical aid to Thompson. Sheperd pronounced Thompson deceased at 5:34 a.m.

Statement of Deputy Jesse Rodriguez

Rodriguez was assigned to SEB and was one of the paramedics at the scene. He heard a radio call of a man down and went to that location. He saw Thompson laying on the grass on his right side. He heard from the patrol deputies that the man was laying on a firearm and may have a gunshot injury. Rodriguez could not see Thompson's hands. Thompson was generally motionless but occasionally moved his leg. He appeared to be taking deep, labored breaths. Deputies issued commands to Thompson, but he did not comply. A flash bang device was deployed but Thompson did not react. When rubber bullets were fired at Thompson, he suddenly stood up, but did not say anything. Deputies yelled at him to show his hands, but Thompson did not comply. Rodriguez said, "As soon as he got up, I saw him get up like he was going to run. He went like, I don't know if he was pulling up his shorts, but he was reaching for his waistband and by that time, guys obviously, I don't know if they thought he was reaching for something. Everybody started pushing behind the armor." Rodriguez said that SEB personnel sought cover behind the ARV because they thought Thompson was going to produce a firearm and shoot. He saw Thompson running and heard two gunshots. Rodriguez approached Thompson and rendered medical assistance.

Statement of Sergeant Russell Boucher

Boucher was assigned to SEB and responded to the incident. He was assisting in detaining Alexander at a residence. As Alexander was being detained, Boucher heard a radio broadcast that patrol deputies were detaining a man nearby. The man appeared to be suffering from a

gunshot wound and the call stated a firearm was next to him. The description of the man matched the description given earlier of the man who was shooting at the deputies. Boucher drove to the location and saw Thompson laying on the grass. Boucher said Thompson matched the description of the suspect who shot at the deputies, and he was under the impression that the man they had just detained, Alexander, might not be the shooting suspect. Alexander had not yet been positively identified. Boucher was also aware that the shooting suspect had been "playing possum" and hiding while inside the vehicle and moaning until the deputies approached. Boucher believed that the man laying on the grass could also be "playing possum" because he did not move or follow verbal commands. Deputies ordered Thompson to show his hands and surrender. Thompson's back was to him so he could not see Thompson's hands. Based on the patrol deputies' report that the man had a gun, coupled with the man's position which prevented deputies from being able to see his hands, one of the SEB teams repositioned to get a better vantage point. After repositioning, Boucher reported that Thompson's left hand was under his head and his right arm was concealed under his body. He did not see a firearm near Thompson, nor was the helicopter overhead able to see a weapon. A flash bang device was detonated but Thompson did not respond. Rubber projectiles were fired at Thompson and he came up to his knees and looked around at the deputies, who were issuing commands. Thompson did not comply. Thompson took one to two steps initially, which appeared as though Thompson was going to walk away. Boucher believed Thompson was going to run. Boucher said, "He was coming right toward the back end of the ARV…when he actually made that first step and started to walk, he actually reached into his pocket. He reached back out of his pocket and that's when he started to like pick up his pace and he actually went to his waistband." Boucher said Thompson advanced toward the ARV at a pace "faster than a walk, for sure." Ponsford fired at Thompson when Thompson placed his hand on his waistband and Thompson was two to three feet away from the driver's door of the ARV.

Statement of Deputy Richard Dilberti

Dilberti was assigned to SEB and was assisting in the containment when he heard a radio broadcast of a suspect at a nearby location lying on the ground and possibly suffering from a gunshot wound. He went to that location and saw Thompson laying on the grass on his right side. Dilberti was unable to see Thompson's hands because they were under his body. Thompson was exhibiting shallow breaths. Thompson did not respond to verbal commands. Dilberti and his team repositioned to get a better view of Thompson's hands. They were still unable to see Thompson's hands because of their angle and their view was obstructed by a parked vehicle. A flashbang device was detonated near Thompson. He did not react. Dilberti heard rubber bullets being fired and heard over the radio that Thompson was getting up. He heard two gunshots.

Statement of Deputy Brice Stella

Stella was assigned to SEB and was one of the paramedics assigned to the incident. He heard radio traffic of a man down who was armed and being held at gunpoint by patrol deputies. He heard over the radio the man's race and clothing description, which matched the suspect description. Stella went to that location and saw Thompson laying on the grass. Stella was unable to see Thompson's hands because of the way Thompson's body was positioned. Thompson was unresponsive and appeared to be injured. Stella heard Pohl, another paramedic at the scene, say that Thompson had taken an agonal breath, indicating to him that he was near

death. Deputies issued verbal commands to Thompson, but he did not respond. A flashbang device was deployed but Thompson did not respond so Stella thought Thompson was dead. Rubber bullets were fired at Thompson. Thompson responded by turning and looking at the deputies. When Stella went to his medical vehicle to retrieve his medical gear, he heard two gunshots. Stella said he believed that Thompson was armed with a firearm based on his observations coupled with information he heard over the radio. After the shooting he approached Thompson to render medical aid and looked around expecting to see a gun. He did not see a gun.

Statement of Deputy Grant Roth

Roth was assigned to SEB and was involved in searching for the suspect who fired at the deputies. Roth heard radio traffic that a suspect had been detained inside a residence. Simultaneously, he heard a radio broadcast of a man down nearby. The man was being detained at gunpoint and was laying on the ground and appeared to be shot. Roth went to that location and saw Thompson laying on the grass. Thompson was wearing a Lakers jersey and dark shorts. Roth could not see Thompson's hands. Deputies gave Thompson verbal commands and deployed a flashbang device and rubber bullets. He heard over the radio that Thompson stood up and was running. Roth heard two gunshots. He did not see the shooting because he was inside the ARV.

Statement of Deputy Ervin Francois

Francois was assigned to SEB and assisted in the search for the person who fired at the deputies. He heard over the radio that a suspect inside a residence was being detained and pending a positive identification. While waiting for that identification, Francois heard radio traffic that a man was found laying on the ground in front of a nearby residence and appeared to have been shot. He also heard that there was a handgun next to the man. Francois went to that location and saw Thompson laying on the grass. Francois could not see Thompson's hands. Thompson was laying on his right side with his right hand underneath his body. His left arm was bent, and his left hand was under his head. Thompson did not respond to verbal commands or a flashbang device. SEB personnel were ordered to make sure the ARV window ports were fully closed in the event that an armed encounter occurred. After rubber bullets were fired at Thompson, Francois heard over the radio that Thompson was up and running. Francois heard shots fired and "suspect down." Francois did not see the incident.

Statement of Deputy Andrew Toone

Toone was assigned to SEB and assisted in attempting to locate the suspect who shot at the deputies. A suspect was detained inside of a residence. While SEB deputies were waiting for a positive identification of that suspect, a radio call came out that patrol deputies were detaining a man nearby who matched the suspect description. The man was reported as wearing a sports jersey and black shorts and was laying on the ground and appeared to be wounded. Toone went to the location and saw Thompson laying on the ground. Toone was in the turret of one of the ARVs and from his vantage point he could not see Thompson's hands. He could only see his left wrist but could tell that there was nothing in Thompson's left hand. Thompson was laying on his right side, so he was unable to see Thompson's right arm. Thompson was not moving but Toone could see him breathing. Thompson did not respond to verbal commands or a flashbang device.

When Thompson was struck with rubber bullets, he sat up and looked around. He then stood up and ran toward one of the ARVs. Ponsford fired once. Thompson continued running toward Ponsford and he fired a second time. Thompson fell next to the ARV.

Statement of Deputy Ruben Quintero

Quintero was assigned to SEB and assisted in the containment at the scene. While searching for the suspect he heard radio traffic that patrol deputies were detaining a possible suspect nearby at gunpoint. The man was laying on the ground in front of a residence. Quintero went to that location and saw Thompson laying on his right side on the grass. He could not see Thompson's hands. Thompson was wearing a sports jersey and black shorts. Quintero issued verbal commands for Thompson to show his hands, but he did not comply. Thompson did not respond to a flashbang device. Rubber bullets were fired at Thompson and that caused him to come to his feet and run toward one of the ARVs. Quintero heard two gunshots and Thompson went down. Because they were uncertain if Thompson was armed, they approached him using a ballistic shield.

Statement of Deputy James Ponsford

Ponsford said that on July 28, 2016, he was assigned to SEB and was monitoring the radio. He heard that patrol deputies had been involved in a vehicle pursuit and shootout. Ponsford's team was dispatched to assist in locating an outstanding suspect and to provide support for another SEB team.

Ponsford arrived at approximately 3:15 a.m. and was briefed by a patrol deputy about the incident. Ponsford was advised that the suspect crashed and fired a gun at the deputies. When the pursuing deputies approached the suspect, he was moaning and groaning as if he had been shot. The suspect then ran from the vehicle. Ponsford was informed that the suspect they were looking for was wearing a white T-shirt. As the incident was unfolding, he also learned that a suspect might be in a backyard of a residence and might be holding hostages there.

Ponsford responded to the residence and maintained cover, while another SEB team searched the residence. The suspect was not located and the residence was cleared. The suspect's description was updated to a black man, with a "fade" style haircut, wearing a dark colored sports jersey and dark colored long shorts. Ponsford and other members of his SEB team searched the nearby residential yards and access road for the suspect for approximately one hour with negative results.

Other deputies conducted another search of the residence to investigate a 9-1-1 hang up call that had been received. While the search was in progress, Ponsford heard a deputy broadcast over the radio that the Compton Sheriff's Station received a "man down" call nearby, and a man was laying on the front lawn of a residence. Ponsford also heard that the person in the "man down" call appeared to have been shot, resembled the suspect who had previously fired at deputies, and there appeared to be a gun lying next to him on the ground. Ponsford's SEB team responded in an ARV, driven by Deputy Boling, to the "man down" call.

Boling initially parked behind another ARV that had 15 to 20 deputies standing behind it. As Ponsford responded to the location, the team was informed that a suspect (Alexander) had been

removed from a residence but had not been positively identified. Ponsford doubted that the individual removed from the residence was the suspect of the earlier pursuit and shooting, because after seeing Thompson, he believed Thompson matched the description of the suspect. Other deputies stated they also believed that the suspect who had been removed from residence was not the correct suspect.

Ponsford was designated as the "over watch" in his ARV, positioned inside the elevated turret with a rifle, which allowed him to have a better view of the scene and to cover the other deputies. Ponsford's head and upper body were exposed above the top of the ARV, with the hatch of the turret behind him, so as not to interfere with his view. Ponsford observed Thompson laying in the grassy area between the street and the sidewalk, just north of a vehicle that was parked at the north curb.

Boling drove the ARV around the block, approaching Thompson from the east, and stopped parallel to the car parked at the north curb. From his elevated position, Ponsford could see Thompson over the hood of the car parked at the curb. Thompson was illuminated by spotlights from the ARVs, and the light on his weapon. Using the magnifying scope on his rifle, Ponsford saw that Thompson was on his right side, facing the residence, slightly rolled to the left. His left hand was underneath his head, and Ponsford could see the tips of the fingers on his left hand. Thompson's right hand was completely concealed underneath his body. Thompson wore a black and dark purple, "Kobe Bryant," "Lakers" jersey, and black shorts that ended below his knees. A yellow and purple "Lakers" baseball cap was on the ground next to his head. Ponsford believed Thompson "exactly" matched the description he had been given of the suspect who had fired on deputies earlier that morning, and he was 100 percent sure that Thompson was the individual who had been in the vehicle pursuit and had fired at the deputies.

Ponsford also used the magnifying scope to search for a nearby weapon because the patrol deputies reported that Thompson had a weapon. From his position, about 20 to 25 feet away, Ponsford could only see the area north of Thompson, and did not see a weapon or any injuries. From that position, Ponsford was unable to see the area between Thompson and the parked vehicle. Deputies from the ARV to the west of Thompson were yelling, "Suspect, put your hands up! Put your hands up! It's the Sheriff's Department!" The commands, which were said six to eight times, were yelled by individual deputies and over loudspeakers. Thompson did not respond.

Ponsford continued to focus on Thompson while his team members sat inside the ARV. Ponsford could not see any weapons near Thompson. Thompson's body occasionally twitched, or stirred slightly, but never moved in response to the deputies' commands.

Since Thompson was not responding to verbal commands, the deputies decided to deploy a noise diversion device next to him. Deputies detonated a flash bang device, which he described as "excruciatingly loud," in the grass next to Thompson. Thompson had no visible reaction to the noise. Ponsford believed Thompson's lack of response was "purposeful" because of the intensity of the light and noise.

Due to Thompson's continued lack of response, a rubber bullet was deployed at him. The first rubber bullet missed, and a second round was deployed three to four seconds later, striking Thompson in the buttocks or lower back. Thompson did not respond. The third round struck

Thompson in the same area. At that point, Thompson pushed himself up with both hands, rose to a low crouch, then quickly stood up. Deputy Chris Smelser told Thompson, "Get down on the ground! Get your hands up! Get your hands up! Get down on the ground!" Thompson did not comply but turned and looked at the deputies over his shoulder. He then quickly turned and moved directly toward Ponsford's ARV.

Ponsford clearly saw that Thompson was not holding a handgun in his left hand, but his right hand was concealed and pulling at his waistband area. Ponsford made this observation within a second, and believed Thompson was either pulling his shorts up, or pulling a weapon or something from his pocket.

Ponsford pointed the light from his rifle and a green laser into Thompson's face to disable or blind him. Thompson did not react to the light and laser.
Ponsford waited a moment to see if he could positively identify whether Thompson had a weapon, and at the last possible moment, and in fear that Thompson was running towards him to inflict great bodily injury or kill him, fired a round at him.

The first round did not appear to affect Thompson, and Ponsford believed he may have missed. Thompson continued to run towards Ponsford without slowing or showing any reaction.

Still in fear of death or great bodily injury, Ponsford fired a second round. Thompson had run so close to the west side of the ARV that Ponsford could no longer see him after he fired the second round, and he shrank down in the turret in case Thompson climbed up the side of the ARV.

Ponsford was advised that other less-lethal weapons were then deployed on Thompson, who had fallen next to the driver's side door of the ARV, but Ponsford remained in the ARV and could did not see those actions.

An arrest team took Thompson into custody and medical aid was rendered.

Ponsford stated that his decision to fire the rounds was based on his fear that Thompson, whom he believed was the suspect of the earlier pursuit and shooting and attempt to ambush the deputies, was armed and pretending to be injured, as he did in the earlier shooting. Ponsford believed Thompson was attempting another ambush.

Further, Ponsford believed that the position of Thompson's body was in an unusual position on the ground, that he had been intentionally concealing a weapon in his right hand while he was on the ground, and that he was trying to lure the deputies closer before firing on them again.

Thompson's lack of reaction to the presence of multiple deputies, the multiple commands, and the less than lethal devices that were deployed reinforced Ponsford's belief that Thompson was running directly at him to shoot and kill or harm him. Additionally, Ponsford was concerned that since Thompson was a couple of blocks outside of the original containment, had he run around the ARVs, then he would be armed and loose in a residential neighborhood, putting both the public and sheriff's personnel in danger.

Statement of [redacted]

[redacted] was inside her residence when she heard police activity outside. She heard someone outside say, "Put your hands up! Get down on the ground!" Then she heard gunshots.

Statement of [redacted]

At approximately 4:00 a.m., [redacted] saw numerous police cars outside her residence. She heard a loud booming noise and moved closer to see what was going on. She saw Thompson walking toward Ponsford, who was armed with a rifle in the turret of the ARV. She could not see if Thompson was armed. Thompson moved from side to side as if he was trying to escape but the ARV blocked his path forward. Ponsford was pointing a rifle down at Thompson. Deputies were yelling at Thompson to stop and give up. Thompson did not comply. The deputies yelled, "Put your hands up in the air and stop!" [redacted] heard one round fired. Thompson fell face down on the ground. Thompson tried to get to his feet in a "push-up type of movement," and the deputies yelled, "Please! Stay down and don't move!" [redacted] heard one more round fired. Thompson stopped moving. According to [redacted] the deputy tried to avoid shooting Thompson.

Statement of [redacted]

[redacted] said his [redacted] lived with him at a residence approximately [redacted] from where the shooting occurred. Thompson had mental health issues, may have suffered from bipolar disorder, liked to consume alcohol, and had a slow reaction time. [redacted] said that his [redacted] "Had to think about things," and had the mentality and maturity level of a child.

LEGAL ANALYSIS

No criminal liability attaches to Ponsford's actions unless the prosecution can prove *beyond a reasonable doubt* that he was not actually and reasonably in fear for the safety of himself or others when he fired his service weapon. *People v. Banks* (1976) 6 Cal.App.3d 379, 383-384. The prosecution cannot meet that burden in this case.[4]

Mistake of Fact

A person is not guilty of a crime if he commits an act under an honest and reasonable belief in the existence of certain facts and circumstances which, if true, would make such an act lawful. CALCRIM No. 3406; *People v. Raszler* (1965) 169 Cal.App.3d 1160, citing *People v. Osbourne* (1979) 77 Cal.App.3d 479. "An honest and reasonable belief in the existence of circumstances, which, if true, would make the act for which a person is charged an innocent act, has always been held to be a good defense." *People v. Lucero* (1988) 203 Cal.App.3d 1011. When a person commits an act based on a reasonable mistake of fact, his guilt or innocence is determined as if the facts were as he perceived them. *Id., see also, People v. Beardslee* (1991) 53 Cal.3d 68.

[4] By contrast, proof of civil liability is the lower standard of a "preponderance of the evidence." The County of Los Angeles in fact settled a related lawsuit for $1.49 million prior to a lawsuit being filed and depositions being taken.

Moreover, if the person's beliefs were reasonable, *the danger does not need to have actually existed. Id.* (emphasis added). An officer is not constitutionally required to wait until he sets eyes upon a weapon before employing deadly force to protect himself against a fleeing suspect who turns and moves as though to draw a gun. *Thompson v. Hubbard* (2001) 257 F.3d 896, 899.

In analyzing the reasonableness of the arrest of a person based on mistaken identity by police officers, the United States Supreme court explained, "When the police have probable cause to arrest one party, and when they reasonably mistake a second party for the first party, then the arrest of the second party is a valid arrest." *Hill v. California* (1970) 401 U.S. 797, citing the underlying case at 69 Cal.2d 550.

The same legal principle applies when an officer mistakenly shoots an innocent person, believing him to be a suspect. *Milstead v. Kibler* (2001) 243 F.3d 157. "Where an officer's particular use of force is based on a mistake of fact, we ask whether a reasonable officer would have or should have accurately perceived that fact." *Torres v. City of Madera* (2011) 648 F.3d 1119, citing *Jensen v. City of Oxnard* (1998) 145 F.3d 1078. Courts have warned against second-guessing the split-second judgment of a trained police officer merely because that judgment turns out to be mistaken. *McLenagen v. Kegan, et. al.* (1994) 27 F.3d 1002.

Here, Ponsford was mistaken in two fundamental areas: 1) that Thompson was the suspect who fired at the deputies, and, 2) that Thompson had a gun.

While it is now known that Ponsford shot a person he mistakenly thought was armed and had fired a gun at deputies earlier, those mistakes would not negate justification for the use of deadly force if Ponsford acted reasonably. That fact that other deputies had the same belief supports the conclusion that Ponsford acted reasonably. The collective knowledge of the deputies at the scene was that Thompson was a suspect in the earlier shooting and may have had a gun. For example, as Deputy Rodriguez said, "As soon as he got up, I saw him get up like he was going to run. He went like, I don't know if he was pulling up his shorts, but he was reaching for his waistband and by that time, guys obviously, I don't know if they thought he was reaching for something. Everybody started pushing behind the armor." The reasonable inference drawn from this evidence is that Rodriguez and other SEB personnel sought cover behind the ARV because they thought, as Ponsford did, that Thompson was going to produce a firearm and shoot.

This state of mind was based on the similarity of Thompson's clothing with the suspect's clothing, his unnatural position, labored breathing consistent with injury, proximity to the shooting scene, non-compliance with orders to show his hands, not responding to either less-lethal force or the flash bang device, and reaching toward his waistband. Together, these facts are consistent with Thompson faking an injury as Alexander did.

An objectively reasonable officer, under the same converging circumstances who is forced to make a split-second decision under rapidly unfolding circumstances, could reasonably have made the same decision.

Self-Defense

California law permits the use of deadly force in self-defense or in defense of others if it reasonably appears to the person claiming the right of self-defense or the defense of others that

he actually and reasonably believed he or others were in imminent danger of great bodily injury or death. *People v. Humphrey* (1996) 13 Cal.4th 1073.

A police officer may use reasonable force to effect an arrest, prevent escape, or overcome resistance of a person the officer believes has committed a crime. Penal Code section 835a. An officer "may use all the force that appears to him to be necessary to overcome all resistance, even to the taking of life; [an officer is justified in taking a life if] the resistance [is] such as appears to the officer likely to inflict great bodily injury upon himself or those acting with him." *People v. Mehserle* (2012) 206 Cal.App.4th 1125, 1146.

A killing of a suspect by a law enforcement officer is lawful if it was: (1) committed while performing a legal duty; (2) the killing was necessary to accomplish that duty; and (3) the officer had probable cause to believe that (a) the decedent posed a threat of serious physical harm to the officer or others, or (b) that the decedent had committed a forcible and atrocious crime. CALCRIM No. 507, Penal Code section 196. A forcible and atrocious crime is one which threatens death or serious bodily harm. *Kortum v. Alkire* (1977) 69 Cal.App.3d 325, 333.

An officer has "probable cause" in this context when he knows facts which would "persuade someone of reasonable caution that the other person is going to cause serious physical harm to another." CALCRIM No. 507. When acting under Penal Code section 196, the officer may use only so much force as a reasonable person would find necessary under the circumstances. *People v. Mehserle, supra*, 206 Cal.App.4th at p. 1147. And he may only resort to deadly force when the resistance of the person being taken into custody "appears to the officer likely to inflict great bodily injury on himself or those acting with him." *Id.* at 1146)(quoting *People v. Bond* (1910) 13 Cal.App. 175, 189-190). The prosecution has the burden of proving beyond a reasonable doubt that a killing was not justified. CALCRIM Nos. 505, 507.

"Where the peril is swift and imminent and the necessity for action immediate, the law does not weigh in too nice scales the conduct of the assailed and say he shall not be justified in killing because he might have resorted to other means to secure his safety." *People v. Collins* (1961) 189 Cal.App.2d 575, 589.

The belief in the need to defend oneself must be both actual and reasonable. Here, there is insufficient evidence to prove, beyond a reasonable doubt, that any claims of self-defense or defense of others are unreasonable. "[T]he rule is well established that one who, without fault, is placed under circumstances sufficient to excite the fears of a reasonable man that another designs to commit a felony or some great bodily injury and to afford grounds for a reasonable belief of imminent danger, may act upon those fears alone and may slay his assailant and be justified by appearances." *People v. Mercer* (1962) 210 Cal. App. 2d 153, 161.

In protecting himself or another, a person may use all force which he believes reasonably necessary and which would appear to a reasonable person, in the same or similar circumstances, to be necessary to prevent injury which appears to be imminent. CALCRIM No. 3470.

Ultimately, the question being asked is, "What would a reasonable officer do in this circumstance?"

In a situation such as this, where criminality is based on what a reasonable person acting as a police officer would do under the same or similar circumstances, and when numerous other deputies perceived Thompson as being an armed suspect, insufficient evidence exists to prove Ponsford acted unreasonably.

The uniqueness of the circumstances surrounding the shooting has a significant effect on this evaluation. In evaluating whether a police officer's use of deadly force was reasonable in a specific situation, it is helpful to draw guidance from the objective standard of reasonableness adopted in civil actions alleging Fourth Amendment violations. "The 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight… The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation." *Graham v. Connor* (1989) 490 U.S. 386, 396-397. The Fourth Amendment reasonableness test is, "An objective one: the question is whether the officer's actions are 'objectively reasonable' in light of the facts and circumstances confronting them." *Graham v. Connor, supra,* 490 U.S. at 396

The analysis must take into account the deputy's perceptions as part of the totality of the circumstances, and courts have cautioned against second-guessing the split-second judgment of a trained police officer merely because that judgment turns out to be mistaken. *Milstead v. Kibler* (2001) 243 F.3d 157.

In *Graham*, the United States Supreme Court held that the reasonableness of the force used "requires careful attention to the facts and circumstances" of the particular incident. "…Thus, under *Graham*, we must avoid substituting our personal notions of proper police procedure for the instantaneous decision of the officer at the scene. We must never allow the theoretical, sanitized world of our imagination to replace the dangerous and complex world that policemen face every day. What constitutes 'reasonable' action may seem quite different to someone facing a possible assailant than to someone analyzing the question at leisure." *Smith v. Freland* (6th Cir. 1992) 954 F.2d 343, 347.

The test of whether the officer's actions were objectively reasonable is "highly deferential to the police officer's need to protect himself and others." *Munoz v. City of Union City* (2004) 120 Cal. App. 4th 1077, 1102.

In this case, the defense would surely argue that there were several other like-minded individuals as Ponsford at the scene, providing a baseline from which to establish a "reasonable person standard."

Actual danger is not necessary to justify the use of force in self-defense. If one is confronted by the appearance of danger which one believes, and a reasonable person in the same position would believe, would result in death or great bodily injury, one may act upon those circumstances. The right of self-defense is the same whether the danger is real or apparent. *People v. Toledo* (1948) 85 Cal. App.2d 577

If a person acted from reasonable and honest convictions, he cannot be held criminally responsible for a mistake in the actual extent of the danger, when other reasonable men would

alike have been mistaken. *People v. Jackson* (1965) 233 Cal. App.2d 639. "A defendant may well be mistaken in his assessment of the circumstances; but if reasonably so, he is nevertheless entitled to the defense." *People v. Humphrey*, supra, 13 Cal.4th 1073.

Also, when considering the reasonableness of a claim of self-defense, one must take into account the effect of antecedent threats or assaults by the victim, or in this case, the person that the victim was perceived to be. CALJIC No. 5.50.1. "While such considerations alone do not establish a right of self-defense, they illuminate and reflect on the reasonableness of (the) defendant's perception of both the imminence of danger and the need to resist with the degree of force applied. They may also justify the defendant 'in acting more quickly and taking harsher measures for (his) own protection in the event of assault, whether actual or threatened, than would a person who had not received such threats.'" *People v. Humphrey, supra*, 13 Cal.4th at 1094, citing *People v. Fitch* (1938) 28 Cal.App.2d 31: *People v. Moore* (1954) 43 Cal.2d 517, and *People v. Bush* (1978) 84 Cal.App.3d 294. Antecedent threats may color a person's perceptions. *People v. Minifie* (1996) 13 Cal.4th 1055.

If the defendant raises a defense, such as self-defense, the prosecution bears the burden of proving, beyond a reasonable doubt, that the defense does not apply. *People v. Pineiro* (1982) 129 Cal.App.3d 915, at 920. In other words, the prosecution has the burden to prove a defendant did not act in self-defense. *People v. Rios* (2000) 23 Cal.4th 450. No criminal liability attaches to an officer's actions unless the prosecution can prove, beyond a reasonable doubt, that the particular officer was not actually and reasonably in fear for their safety or the safety of others when he fired his weapon.

Analysis

Before analyzing the potential criminality of Ponsford's actions, it is important to detail Alexander's dangerous and violent actions, of which Ponsford was aware, because those facts bear on Ponsford's mental state at the time he fired his duty weapon. Every factor contributing to an officer's state of mind must be considered, including knowledge about the shooter's actions, concerns about tactical planning, the collective information the deputies received throughout the night, observations and communications occurring as Alexander was being detained, the report of a person fitting the suspect's description who was down, possibly shot, and armed, and finally, any stimuli arising during the shooting.

In the hours before Ponsford and the other deputies encountered Thompson, Alexander carjacked a man at gunpoint, led deputies on a high speed pursuit, including crashing through fences at an elementary school, and ultimately engaged the deputies in a gun battle. Ponsford and the other deputies at the scene were aware that Alexander was armed, had tried to kill pursuing deputies, and had demonstrated planning and sophistication by faking an injury and attempting to ambush the deputies in order to facilitate his escape. Ponsford and the other deputies knew of Alexander's intentions and willingness to kill, and it was evident that his deadly threat extended to all law enforcement and anyone in his path. Undoubtedly, Alexander's violent actions and deadly threat would be the focal point of any potential defense.

The following factors also contributed to Ponsford's state of mind that he was encountering a deadly threat:

First, Alexander was being detained simultaneously as the "man down" call was received. The timing of these events caused confusion. Alexander had not been positively identified and was wearing only underwear. He was not wearing a sports jersey and shorts as described, and a gun was not found immediately in his area. This caused reasonable suspicion that the actual suspect, or a second suspect, was still outstanding and Thompson could in fact be that suspect. Thompson was close to where the gun battle with the deputies occurred, and his clothing was consistent with the suspect description. His unnatural body position and location on a stranger's lawn, agonal breathing, and non-responsiveness was consistent with the conclusion that he was either wounded in the gun battle with the deputies or was again faking injury. The deputies had no way of knowing at the time that Thompson had alcohol and cocaine in his bloodstream and may have had mental issues, which may have explained his unusual behavior. Under rapidly unfolding circumstances, it was consistent with the known facts at the time, under very unique circumstances, that Thompson was the actual suspect, and he was armed and possibly faking injury to ambush the deputies again.

Second, the first deputies who encountered Thompson did in fact believe that Thompson could be armed, and that information was broadcast and relayed verbally to all the deputies, including Ponsford. As Deputy Burk explained, he broadcast, "Hey, for SEB K-9 units approaching, he may have a gun next to him on the ground." Every deputy at the scene believed they were dealing with a possibly armed suspect. Although Ponsford was ultimately mistaken about Thompson being the actual armed suspect, his perceptions were based, in part, on what other deputies were reporting to him. It was reasonable and prudent for Ponsford to rely on that information.

Third, whether Thompson actually had a gun could not be ruled out before the shooting because Thompson's right hand was hidden, he was not responding to commands, and the deputies could not get very close to Thompson because of the officer safety issues involved. It is axiomatic that an officer's ability to see and control a potentially armed suspect's hands is a life and death issue and is critical to officer safety. Here, Ponsford and the other deputies could not see Thompson's right hand. Under these circumstances, it would have been dangerous and unreasonable to assume Thompson was unarmed. This issue would undoubtedly be a focal point of any potential defense.

Conclusion

It is clear that Ponsford's actions were responsive to the actions, observations, and reports of his fellow deputies, which were mistaken as to Thompson being armed, coupled with his personal observations that Thompson presented a deadly threat when he suddenly jumped up and ran toward him and reached toward his waistband.

Based on the totality of the circumstances, Thompson's actions could reasonably be interpreted by a reasonable deputy as threatening even though, in hindsight, Thompson's actions were not life-threatening.

Ponsford's conduct and voluntary statement indicated he actually believed Thompson was an armed suspect who presented a deadly threat, and the evidence is consistent with that belief being reasonable. The circumstances immediately prior to, and during the shooting, put Ponsford in a situation in which he was required to make a split-second judgment. Ponsford's

fear of Thompson was understandable and justified given that he believed he was dealing with an armed suspect who had tried to kill deputies a short time earlier, and as one of the "overwatch" deputies it was his duty to protect himself and the deputies around him from being shot. There is no evidence to suggest that Ponsford did not honestly and reasonably believe that Thompson was an armed suspect who presented a deadly threat when he fired his service weapon to protect himself and others.

In sum, what transpired in this incident was a tragic series of events put in motion by Alexander and his dangerous and violent actions. A reasonable trier of fact is likely to find that Alexander put Ponsford and the other deputies in a situation that caused them to make a split-second decision regarding the amount of force to use in defending themselves, and the public, from a perceived armed attacker. The fact that Ponsford's actions were based on the mistaken fact that Thompson was the armed suspect does little to assuage the emotional response to such a tragedy. Nonetheless, this office is guided by the legal principles discussed in this memorandum.

Based on the totality of the circumstances in this incident, there is insufficient evidence to prove beyond a reasonable doubt that Deputy Ponsford did not act in self-defense and/or in the defense of others.